



## Department of Energy

ROCKY FLATS OFFICE  
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MAR 11 1993

93-DOE-02422

Mr. Martin Hestmark  
U. S. Environmental Protection Agency, Region VIII  
ATTN: Rocky Flats Project Manager, 8HWM-RI  
999 18th Street, Suite 500, 8WM-C  
Denver, Colorado 80202-2405

Mr. Gary Baughman  
Hazardous Waste Facilities Unit Leader  
Colorado Department of Health  
4300 Cherry Creek Drive South  
Denver, Colorado 80222-1530

Gentlemen:

As you are aware, a meeting was held at the U.S. Fish and Wildlife Service (FWS) office on February 3, 1993. Representatives from DOE/RFO, EG&G, U.S. EPA, and the Army Corps of Engineers met with the FWS and were told by FWS that a nesting pair of bald eagles took up residence near the northwest corner of Standley Lake in OU-3.

Bald eagles currently receive protection under the Endangered Species Act, the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Each of these Federal Statutes has criminal and civil liability provisions for violations including "take". Under the Endangered Species Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to engage in any such conduct. "Take" under the Bald and Golden Eagle Protection Act includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Thus even approaching an eagle is interpreted as take by the FWS.

On February 4, 1993, the RFO OU-3 project manager informally instructed his EG&G OU-3 counterparts to temporarily halt all field investigations in the vicinity of the northwest portion of Standley Lake until appropriate consultations with the FWS could be completed. A memorandum (enclosed) from DOE/RFO to EG&G, dated February 12, 1993, formalized the instruction.

EPA and CDH were informally notified at this time, prior to the February 17, 1993, press release concerning the Bald Eagles. This letter formally confirms the February 12, 1993 notification. DOE/RFO is formally notifying EPA and CDH that these actions have been taken in accordance with PART 51, paragraph 256, COMPLIANCE WITH OTHER LAWS of the Interagency Agreement (IAG). At present, the OU-3 field investigation schedule has not been impacted, but we expect an impact in the immediate future. At that time, DOE/RFO will likely request a schedule extension in accordance with PART 42 of the IAG, extensions.

ADMIN RECORD


A-OU03-000122

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The FWS requested that DOE/RFO group our activities and proposed activities for the purpose of having a single consultation, rather than numerous consultations, because of their limited staff. DOE/RFO should be ready to consult with the FWS by mid-March.

If you have any questions, please feel free to contact Robert H. Birk at 966-5921 or Bruce Thatcher at 966-3532.

Sincerely,

  
James K. Hartman  
Assistant Manager for Transition  
and Environmental Restoration

Enclosure

cc w/o Enclosure:

B. McIntyre, CDWR  
G. Van Slyke, CDWR  
D. Parner, CSCB  
R. Cattany, CDNR  
J. Bruch, CDH  
E. Kray, CDH

cc w/Enclosure:

J. Ciocco, EM-453  
B. Magee, HAZWRAP  
B. Brainard, OPA, RFO  
M. Guillaume, ERM, RFO  
R. Benedetti, EG&G  
M. McHugh, ERM, DOE  
M. Arndt, EG&G  
J. Wegrzyn, FWS  
L. Carlson, FWS  
D. Weber, CDW  
P. Rogers, CGS  
S. Arnold, CDH  
J. Love, CDH  
M. L. Tucker, Jeffco  
S. LeBreche, Jeffco  
B. Pritchett, Jeffco

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